

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

XIMPLEWARE CORP.,

No. C 13-05160 SI

Plaintiff,

**ORDER RE VERSATA DEFENDANTS'
MOTION TO DISMISS**

v.

VERSATA SOFTWARE INC.; TRILOGY
SOFTWARE INC.; TRILOGY
DEVELOPMENT GROUP, INC.;
AMERIPRISE FINANCIAL, INC.; AND
AMERIPRISE FINANCIAL SERVICES, INC.,

Defendants.

The motion by defendants Versata Software, Inc., Trilogy Development Group, Inc., and Aurea Software Inc. (collectively, "the Versata defendants") to dismiss plaintiff XimpleWare Corporation's claims of direct and contributory copyright infringement, violation of the Lanham Act, breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, intentional interference with prospective economic advantage, unfair competition, and declaratory relief, made in the First Amended Complaint, came on for hearing on March 14, 2014.

For the reasons articulated by the parties in their briefing and for the reasons stated and discussed at the hearing, the Court finds that the First Amended Complaint adequately states claims for direct and contributory copyright infringement, violation of the Lanham Act, breach of contract, unjust enrichment, unfair competition, and declaratory relief. To that extent, i.e. as to claims 1, 2, 3, 4, 6, 8 and 9, the motion to dismiss is DENIED.

1 As to claim 5, the Court finds that the allegations in the First Amended Complaint do not support
2 the application of California law with respect to the claim for breach of the implied covenant of good
3 faith and fair dealing. Since under Texas law no such claim could be stated under the circumstances
4 presented here (*see City of Midland v. O'Bryant*, 18 S.W.3d 209k, 215 (Tex. 2000)), the motion to
5 dismiss claim 5 is GRANTED.

6 As to claim 7, the Court finds that the allegations in the First Amended Complaint do not
7 sufficiently allege the existence of economic relationships between plaintiff and third parties which
8 carry the probability of future economic benefit to plaintiff. Accordingly, the motion to dismiss claim
9 7 is GRANTED.

10 Since the complaint has already been amended, and since two separate motions to dismiss have
11 now been ruled on, the Court declines to allow further leave to amend at this time.

12 The Versata defendants' answers must be filed no later than March 28, 2014.

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14 **IT IS SO ORDERED.**

15 Dated: March 14, 2014

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SUSAN ILLSTON
19 UNITED STATES DISTRICT JUDGE
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